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Dr. Max Fogiel  
44 Maple Court  
Highland Park NJ 08904

**COPY MAILED**

**NOV 29 2007**

**OFFICE OF PETITIONS**

In re Application of :  
ADRIAN et al. :  
Application No. 10/612,635 : **DECISION ON PETITION**  
Filed: 07/02/2003 :  
Attorney Docket No. ASSEMBLY FOR :  
SEALING AND CENTERING IN A TWO- :  
CYLINDER DASHPOT OR TWO- :  
CYLINDER TELESCOPING LEG :

This is a decision on the "REQUEST TO WITHDRAW THE HOLDING OF ABANDONMENT," filed July 30, 2007, which is being treated as a petition under 37 CFR 1.181.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the Notice of Non-Compliant Amendment mailed February 6, 2006, which set an extendable period of one month or thirty days, whichever was longer, to reply. A Notice of Abandonment was mailed on May 2, 2007.

The practitioner asserted that he did not receive the Notice of Non-Compliant Amendment. The practitioner indicated that the practitioner's offices were searched extensively, but that Notice of February 6, 2006 was not found. Accordingly, petitioners requested that the Office withdraw the holding of abandonment, re-mail the Notice of Non-Compliant Amendment, and re-start the period for reply.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the

Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy requirement (3).

Accordingly, absent a copy of the docket records to establish non-receipt of the Notice of Non-Compliant Amendment, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioners cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioners should consider filing a petition under 37 CFR 1.137(b). The provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed.
- (2) The petition fee as set forth in 37 CFR 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to § 1.137(d).

A copy of the Notice of Non-Compliant Amendment accompanies this decision for petitioners' convenience.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:                Mail Stop PETITION  
                             Commissioner for Patents  
                             P. O. Box 1450  
                             Alexandria, VA 22313-1450

By hand:                U. S. Patent and Trademark Office  
                             Customer Service Window, Mail Stop Petitions  
                             Randolph Building  
                             401 Dulany Street  
                             Alexandria, VA 22314

By facsimile:        (571) 273-8300  
                             Attn: Office of Petitions

Correspondence may also be submitted via the USPTO's electronic filing system.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,635	07/02/2003	Adolf Adrian		3661

7590 02/06/2006  
Dr. Max Fogiel  
44 Maple Court  
Highland Park, NJ 08904

EXAMINER

BURCH, MELODY M

ART UNIT PAPER NUMBER

3683

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

10/612635

Examiner

Melody M. Burch

Applicant(s)

Adrian et al

Art Unit

3683

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

The amendment document filed on 14 November 2005 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
  - ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
  - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
  - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
  - ☒ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

*Eric V. Burns* Burns (571) 272-6580